

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JESSICA JOHNSON, on
behalf of herself and all others
similarly situated,

Plaintiff,

v.

PALMS ASSOCIATES, LLC,
and DURHAM MEWS, LLC,
f/k/a DURHAM SECTION I
ASSOCIATES,

Defendants.

Case No. 1:20-CV-1049

SUGGESTION OF SUBSEQUENTLY DECIDED AUTHORITY

Plaintiff, Jessica Johnson, (“Plaintiff”), Pursuant to LR 7.3(i), and in support of Plaintiff’s Memorandum in Opposition (DE 45) to Palms Associates, LLC and Durham Mews, LLC f/k/a Durham Section I Associates, (collectively, “Defendants”) Motion for Judgment on the Pleadings (DE 39), Plaintiff hereby provides the Court with an order denying a defendant’s motion to dismiss and/or for judgment on the pleadings entered in *Upchurch v. United Property Management, Inc. et al.*, No. 20-CVS-2922, (N.C. Super. Ct. Dec. 21, 2021), which is attached as **Exhibit A**.

Similar to the Defendants here, the *Upchurch* defendants filed a motion to dismiss and/or a motion for judgment on the pleadings arguing the July 2,

2021 Amendment to N.C. Gen. Stat. § 42-46 should be applied retroactively¹. After reviewing all applicable legal authorities, including *Bass v. Weinstein*, Case No. 1:20-CV-91, 2021 WL 4078507 (M.D.N.C. Sep. 8, 2021), the *Upchurch* court denied the landlord defendant's motion to dismiss and/or motion for judgment on the pleadings. Accordingly, for the reasons articulated in Plaintiff's opposition memorandum, retroactive application of the 2021 Amendment to Section 42-46 would interfere with Plaintiff's and the putative classes' vested rights and would violate the open courts clause and the due process clause of the North Carolina Constitution.

This the 28th day of December, 2021.

Respectfully submitted,

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/s/ Scott C. Harris

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¹ While the Order does not specify the basis for the *Upchurch* defendants' motion to dismiss and/or judgment on the pleadings, attached as **Exhibit B** is a copy of the *Upchurch* defendants motion referencing the 2021 Amendment as well as the *Bass* case.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Plaintiff's Suggestion of Subsequently Decided Authority* was filed electronically with the clerk of court via ECF which provided notice to all parties through their counsel of record.

This the 28th day of December, 2021.

/s/ Scott C. Harris
Scott C. Harris